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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/042,857 | 01/11/2002 | Marianne Breslin | BRESLIN-1 | 5296 |

7590 05/22/2003

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EXAMINER

CHAPMAN, JEANETTE E

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
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3635

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/042,857

Applicant(s)

BRESLIN ET AL.

Examiner

Chapman E Jeanette

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,6,8,9 and 12 is/are rejected.
- 7) ☒ Claim(s) 2,3,5,7,10 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

gc 1. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Raasch et al (6071213)(RA). RA discloses an method of assembling an above ground pool comprising:

- providing an elastomeric pad 22 and placing the pad on a surface when converting the same from a trampoline to a swimming pool by inverting the trampoline;
- a continuous wall 24 is erected at the time of manufacture and it was erected around the padded area;
- the continuous wall and the padded area have been lined with a liner 36;
- the elastomeric pad 22 is interposed between the liner 36 and the surface;

Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Quirouette et al (3934277)(QU). QU discloses an above ground pool comprising:

- a continuous wall 10 surrounding the periphery 40 of an enclosed area;
- a pool liner 13 that is draped within the enclosed area;
- a pool pad 22 for use within the enclosed area under the liner; see figure 4;
- at least one section of the padding adjacent 13a forming a pool pad;
- the pool pad includes a central region, a peripheral edge and a peripheral region; see column 2, line 64 through column 3, line 20

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Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over The thickness of the pad and the material of construction are choices within the scope of the invention of RA; such a limitations have been considered matters of choice; one of ordinary skill in the art would have been able to select any thickness/material for the pad commensurate with the intended purpose and function of the invention.

ALLOWABLE SUBJECT MATTER

Claims 2-3, 5,7 and 10-11 are objected to as being dependent on rejected claims. Amending the claims to include the base claim and any intervening claims would place the claims in allowable form.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Chapman whose telephone number is (703) 308-1310. The examiner can normally be reached on Mon. Through Friday from 8:30 to 5:00, except every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached on (703) 308-08390. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3579/80.


JEANETTE E. CHAPMAN
PRIMARY EXAMINER
GROUP 2400 3635